

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM MORALES,

Plaintiff,

ANSWER

-against-

Docket No. 07-CV-8457(WHP)(THK)

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, et. al.

Defendants.
-----X

Defendants City of New York, Martin F. Horn and Michael Hourihane, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their Answer to the Complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph “1” of the Complaint, except admit that plaintiff purports to proceed as stated therein.
2. Deny the allegations as set forth in paragraph “2” of the Complaint.
3. Deny the allegations set forth in paragraph “3” of the Complaint, except admit that plaintiff purports to proceed as stated therein.
4. Deny the allegations set forth in paragraph “4” of the Complaint, except admit that plaintiff purports to bring this action and to invoke the Court’s jurisdiction as stated therein.
5. Deny the allegations set forth in paragraph “5” of the Complaint.
6. Deny the allegations set forth in paragraph “6” of the Complaint, except admit that plaintiff purports to base venue as stated therein.
7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the Complaint.
8. Admit the allegations set forth in paragraph “8” of the Complaint.

9. Deny the allegations set forth in paragraph “9” of the Complaint, except admit that Martin F. Horn is the Commissioner of the New York City Department of Correction and was the Commissioner of the New York City Department of Correction on July 11, 2006, and that plaintiff purports to sue him as stated therein.

10. Deny the allegations set forth in paragraph “10” of the Complaint.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the Complaint.

12. Paragraph “12” of the Complaint sets forth conclusions of law, rather than averments of fact, and accordingly no response is required.

13. Deny the allegations set forth in paragraph “13” of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth that a document purporting to be a Notice of Claim was received by the Comptroller’s Office and admit that the claim has not been settled or adjusted.

14. Deny the allegations set forth in paragraph “14” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the Complaint.

18. Deny the allegations set forth in paragraph “18” of the Complaint.

19. Deny the allegations set forth in paragraph “19” of the Complaint.

20. Deny the allegations set forth in paragraph “20” of the Complaint and its subparts.

21. In response to the allegations set forth in paragraph “21” of the Complaint,

defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this Answer, as if fully set forth herein.

22. Deny the allegations set forth in paragraph “22” of the Complaint.

23. Deny the allegations set forth in paragraph “23” of the Complaint.

24. In response to the allegations set forth in paragraph “24” of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

25. Deny the allegations set forth in paragraph “25” of the Complaint.

26. Deny the allegations set forth in paragraph “26” of the Complaint.

27. Deny the allegations set forth in paragraph “27” of the Complaint.

28. Deny the allegations set forth in paragraph “28” of the Complaint.

29. Deny the allegations set forth in paragraph “29” of the Complaint.

30. Deny the allegations set forth in paragraph “30” of the Complaint.

31. Deny the allegations set forth in paragraph “31” of the Complaint.

32. Deny the allegations set forth in paragraph “32” of the Complaint.

33. Deny the allegations set forth in paragraph “33” of the Complaint.

34. In response to the allegations set forth in paragraph “34” of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

35. Deny the allegations set forth in paragraph “35” of the Complaint.

36. Deny the allegations set forth in paragraph “36” of the Complaint.

37. Deny the allegations set forth in paragraph “37” of the Complaint.

38. In response to the allegations set forth in paragraph “38” of the

Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

39. Deny the allegations set forth in paragraph “39” of the Complaint.

40. Deny the allegations set forth in paragraph “40” of the Complaint.

41. Deny the allegations set forth in paragraph “41” of the Complaint.

42. Deny the allegations set forth in paragraph “42” of the Complaint.

43. In response to the allegations set forth in paragraph “43” of the

Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

44. Deny the allegations set forth in paragraph “44” of the Complaint.

45. Deny the allegations set forth in paragraph “45” of the Complaint.

46. In response to the allegations set forth in paragraph “46” of the

Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

47. Deny the allegations set forth in paragraph “47” of the Complaint.

48. Deny the allegations set forth in paragraph “48” of the Complaint.

49. Deny the allegations set forth in paragraph “49” of the Complaint.

50. Deny the allegations set forth in paragraph “50” of the Complaint.

51. Deny the allegations set forth in paragraph “51” of the Complaint.

52. In response to the allegations set forth in paragraph “52” of the

Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

53. Deny the allegations set forth in paragraph “53” of the Complaint.

54. Deny the allegations set forth in paragraph “54” of the Complaint.

55. In response to the allegations set forth in paragraph “55” of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

56. Deny the allegations set forth in paragraph “56” of the Complaint.

57. Deny the allegations set forth in paragraph “57” of the Complaint.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “58” of the Complaint.

59. Deny the allegations set forth in paragraph “59” of the Complaint.

60. In response to the allegations set forth in paragraph “60” of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

61. Deny the allegations set forth in paragraph “61” of the Complaint.

62. Deny the allegations set forth in paragraph “62” of the Complaint.

63. Deny the allegations set forth in paragraph “63” of the Complaint.

64. Deny the allegations set forth in paragraph “64” of the Complaint.

65. Deny the allegations set forth in paragraph “65” of the Complaint.

AS AN FOR A FIRST AFFIRMATIVE DEFENSE

66. The Complaint fails to state a claim upon which relief can be granted.

AS AN FOR A SECOND AFFIRMATIVE DEFENSE

67. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AN FOR A THIRD AFFIRMATIVE DEFENSE

68. Plaintiff caused or provoked any incident.

AS AN FOR A FOURTH AFFIRMATIVE DEFENSE

69. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AN FOR A FIFTH AFFIRMATIVE DEFENSE

70. At all times relevant to the acts alleged in the Complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AN FOR A SIXTH AFFIRMATIVE DEFENSE

71. At all times relevant to the acts alleged in the Complaint, the duties and functions of the City's officials entailed the reasonable exercise of their proper and lawful discretion. Therefore, defendants have governmental immunity from liability.

AS AN FOR A SEVENTH AFFIRMATIVE DEFENSE

72. Punitive damages cannot be awarded against the City of New York.

AS AN FOR AN EIGHTH AFFIRMATIVE DEFENSE

73. Commissioner Martin F. Horn and Warden Michael Hourihane had no personal involvement in the allegations alleged in the Complaint.

AS AN FOR A NINTH AFFIRMATIVE DEFENSE

74. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendants.

WHEREFORE, defendants request judgment dismissing the Complaint in its entirety, together with costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 3, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for City of New York,
Martin F. Horn and Michael Hourihane
100 Church Street, 6-308
New York, New York 10007
(212) 442-0832

By: /s/ Hugh A. Zuber.
HUGH A. ZUBER (HZ 4935)
Assistant Corporation Counsel

TO: Andrew Stoll, Esq.
Stoll, Glickman & Bellina, LLP
71 Nevins Street
Brooklyn, NY 11217